

SECTION 9

MEASUREMENT AND PAYMENT

9-1.00 Lump Sum Contracts - The following is to be added: When required by the Special Provisions or requested by the Engineer, the Contractor shall submit to the Engineer within 15 days after award of contract, a detailed schedule in triplicate, to be used only as a basis for determining progress payments on a lump sum contract or any designated lump sum bid item. This schedule shall equal, in total, the lump sum bid and be in such form and sufficiently detailed as to satisfy the Engineer that it correctly represents a reasonable apportionment of the lump sum.

9-1.045 Determination of Rights - The following includes changes and/or additions: If the total monetary amount of all the Contractor's claims arising under or by virtue of the contract does not exceed \$25,000, such claims are subject to determination of rights under the contract by a hearing officer of the City Council of the City of Stockton.

The party seeking a determination of rights shall give notice in writing of the claim to the other party and to the City Council of the City of Stockton, setting forth therein the facts on which the claim is based. Such notice shall be given not later than 6 months after the issuance of the final estimate.

The City Council of the City of Stockton will appoint a hearing officer to hear such claim within 60 days after such notice but not before completion of the contract unless the City consents to earlier appointment. The hearing officer will hear and determine the controversy and render the hearing officer's decision in writing within 60 days after the hearing officer's appointment unless otherwise agreed to by the parties or unless for good cause the hearing officer extends such time. Each party shall bear its own costs and shall pay 1/2 of the cost of the hearing.

Rules and regulations adopted by the City Council of the City of Stockton pursuant to Section 14380 of the Government Code will govern the conduct of the hearings, including requirements as to pleadings and other documents to be filed. The rules and regulations may be obtained from the City Council of the City of Stockton.

Compliance with the notice requirements of this section does not relieve the Contractor of responsibility for complying with any notice or protest requirements specified in these Standard Specifications (e.g., Sections 4-1.03, "Changes," 8-1.06, "Time of Completion," 8-1.07, "Liquidated Damages," and 9-1.04, "Notice of Potential Claim") nor does compliance with the notice requirements of this section relieve the Contractor of responsibility for complying with the claims submission requirements in Section 9-1.07B, "Final Payment and Claims."

The notices required by this section shall be sent as follows: (a) to the City Council of the City of Stockton, 425 N. El Dorado Street, Stockton, California 95202; (b) to the Department; (c) to the Contractor: such notices will be sent to the business address set forth in the proposal.

If the address to which the notice to the City Council of the City of Stockton or to the Department is to be changed, the Department will notify the Contractor in writing of such change. The Contractor may change the address to which such notices are to be sent to the Contractor by giving the Department written notification of such change of address.

9-1.06 Partial Payments - Delete all of the third paragraph which states "The Department shall retain...file with the Department." Replace the third paragraph with the following: The City shall retain 10% of such estimated value of the work done and 10% of the value of materials so estimated to have been furnished and delivered and unused or furnished and stored as aforesaid as part security for the fulfillment of the contract by the contractor.

The 10% retention will remain with the City until 35 days after the date the notice of completion was recorded on.

9-1.07B Final Payment and Claims - Delete all of Section 9-1.07B from Caltrans Specifications and replace it with the following changes and additions:

After the work is completed, the Engineer will provide a proposed balancing change order, in writing, stating the total amount payable to the Contractor, including therein an itemization of said amount, segregated as to contract item quantities, extra work and any other basis for payment, and shall also show therein all dedications made or to be made for prior payments and amounts to be kept or retained under the provisions of the contract. All prior estimates and payments shall be subject to correction in the proposed balancing change order. The Contractor shall check the balancing change order and submit a written statement of all claims the Contractor has arising under or by virtue of the contract. No claim will be considered that was not included in which a notice or protest is required under the provision in Sections 4-1.03 "Changes," 8-1.06 "Time of Completion," 8-1.07 "Liquidated Damages," 8-1.10 "Utility and Non-Highway Facilities," and 9-1.04 "Notice of Potential Claim," unless the Contractor has complied with the note or protest requirements in said sections. On the Contractor's approval, or if the Contractor files no claim prior to signing the balancing change order, the following will take place:

1. The balancing change order, when signed by the Contractor, indicates that the Contractor agrees to the quantities contained therein as final quantities and the City of Stockton is then to pay up to 90% of the entire contract.
2. At this time, the City will file the Notice of Completion, which constitutes their acceptance of the work.

3. Thirty-five (35) days after the date the Notice of Completion is recorded, the Retention will be released and constitutes the final payment for the work.

If the Contractor files claims prior to signing the balancing change order, the City will revise the balancing change order accordingly if the claims are approved. Such balancing change order and payment shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor except as otherwise provided in Sections 9-1.03C "Records," and 9-1.09 "Clerical Errors."

The claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. The Engineer will consider and determine the Contractor's claims and it will be the responsibility of the Contractor to furnish within a reasonable time such further information and details as may be required by the Engineer to determine the facts or contentions involved in the Contractor's claims. Failure to submit such information and details will be sufficient cause for denying the claims.

The Director of Public Works will make the final determination of any claims, which remain in dispute after review by the Engineer administering the contract. A board or person designated by said Director will review such claims and make a written recommendation thereon. The Contractor may meet with the Review Board or their staff to make a presentation in support of such claims.

Upon final determination of the claims, the Engineer shall then make and issue the Engineer's final balancing change order in writing and within 30 days thereafter the City will pay the entire sum, if any, found due thereon. Such final balancing change order shall be conclusive and binding against both parties to the contract on all questions relating to the amount of work done and the compensation payable therefor, except as otherwise provided in Sections 9-1.03C "Records," and 9-1.09 "Clerical Errors."

9-1.08 Adjustment of Overhead Costs - This section in Caltrans specifications is to be deleted and is not applicable to projects with the City of Stockton, unless specified otherwise.